IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE.

WRIT PETITION NO. 8848 OF 2003

Deepak K. Shah ..... Petitioner.

versus

Bank of India and anr. ..... Respondents.

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Shri Chetan Kapadia i/b M/s. Pandya Gandhi & Co. for the petitioner.
Shri Satish Shetty with Ms. Swati Deshpande i/b. M.S.Bodhanwalla & Co. for the respondents.

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CORAM ; V.G.PALSHIKAR &
MRS. RANJANA DESAI, JJ.

DATED; 10TH AUGUST, 2004.

P.C.;

1. By this petition, the petitioner impugns the order passed by the DRAT, Bombay. By this order DRAT reduced the amount liable to be deposited with the appeal as contemplated by section 21 of the Act from 75% as required by that section to 30% of the amount decreed. Eight week's time to pay the said sum was given. Petition challenging the same was filed, during the pendency of which the period of eight weeks lapses and the main appeal stood automatically dismissed.

2. Relying on a Supreme Court Judgment in State of Haryana Vs. Maruti Udyog Ltd. and others reported in

(2000) 7 S.C.C. page 348 the learned counsel argued that what is to be considered by the appellate authority is the capacity to pay and not the liability to pay. That exactly what has been done by the Chairman of the Apellate Tribunal while reducing the amount from 75% to 30%. There is no unreasonableness in the order. There is no illegality in this order and consequently there is no reason to interfere with this order. In the result therefore the petition fails and it is dismissed.

(V.G. PALSHIKAR)

(MRS. RANJANA DESAI)

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